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Research article

# Intra-family violence or domestic violence, a domestic relationship or merely a case of sibling rivalry: Where to draw the line?

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## ABSTRACT

In a recent judgment by the South African Supreme Court of Appeal, *Daffy v. Daffy*, (659/2011) [2012] ZASCA 149; [28 September 2012] 4 All SA 607 (SCA); 2013 (1) SACR 42 (SCA) the question of what exactly constitutes a domestic relationship for the purposes of domestic violence came under scrutiny. This article will provide a short overview of the Daffy case and the South African Domestic Violence Act 116 of 1998. The bounds and limits of intra-family violence, domestic violence and what constitutes a domestic relationship in terms of South African law will be considered. While this article does not express an opinion on whether this particular case of sibling conflict and alleged violence amounted to domestic violence as set out in the South African Domestic Violence Act, it does question the Supreme Court of Appeal's constricted interpretation of these concepts and place it within the broader realm of developments on domestic violence and research on family violence. The primary aim of this article is to challenge preconceived and constricted views of what domestic violence entails and who it involves. It will provide the reader with pertinent questions that will, hopefully, instigate further debate about the conceptual structure and scope of domestic violence.

**Keywords:** domestic relationship, South Africa, intra-family violence, sibling rivalry

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## I. INTRODUCTION

This contribution explores a case of alleged adult sibling violence in the context of domestic violence legislation in South Africa. The issue at hand is more than just a question of statutory interpretation; it concerns the very foundation of the legislative scheme – namely the protection of vulnerable individuals. The ostensibly parochial issue in its South African setting might also prove relevant for an international audience grappling with the ever more acute question of violence in the context of what would otherwise be regarded as safe and protective environments like that of the family or extended family.

The prevalence of sibling rivalry and conflict is – as the saying goes – “as old as the hills”. We find references made to sibling violence in religious texts like the story of Cain and Able in The Bible,<sup>1</sup> and also in a number of Shakespearean plays. In King Lear, for example, the King’s daughters are pitted against one another in a bitter conflict,<sup>2</sup> and Richard III is partly driven by the sibling rivalry between himself and his brother.<sup>3</sup> Yet, while sibling violence is ‘probably the most prevalent form of family violence’, it is also the least studied.<sup>4</sup> In 1976, Strauss, Gelles and Steinmetz were the first to call attention to the widespread problem of sibling violence and suggested “... the sibling relationship, rather than the husband and wife or parent and child dyad, was the more likely milieu in which a family member might be victimized”.<sup>5</sup>

However, no universally accepted definition exists on what exactly sibling violence entails. Many studies normalise its occurrence, and most focus exclusively on sibling rivalry amongst young children, leaving other contexts of violent sibling behaviour unexplored.<sup>6</sup> *Daffy v. Daffy*<sup>7</sup> is a recent case about a sibling feud and alleged violence that came before the South African Supreme Court. In the Daffy case, the respondent applied for a protection order against his younger brother under the terms of the Domestic Violence Act 116 of 1998. This case raises important questions about the possible differences between intra-family violence and domestic violence, and examines what constitutes a domestic relationship for the purpose of domestic violence remedies. The case also raises issues of the legal protections that should be afforded in the realm of an ordinary familial relationship of sibling conflict and violence.

## II. DAFFY v. DAFFY (659/2011) [2012] ZASCA 149; [2012] 4 ALL SA 607 (SCA); 2013 (1) SACR 42 (SCA)

*Daffy v. Daffy* involved two middle-aged brothers (the applicant 40 years of age and the respondent 45 years of age) who did not share a common household but who had been involved in a heated feud for several years.<sup>8</sup> At the heart of the ‘unpleasantness that existed between them’ was their financial interest in a company known as Core Mobility (Pty) Ltd.<sup>9</sup> The respondent contended that he was the sole director and shareholder of the company while the appellant claimed that he held 50 per cent of the company’s shares.<sup>10</sup> The appellant, who was employed at Core Mobility (Pty) Ltd for a period of about ten years, had been dismissed in November 2009 after a disciplinary enquiry, which he had refused to attend. The report alleged that the appellant had committed financial irregularities and had abused his position by taking unnecessary trips abroad at the company’s expense. During this enquiry, the relationship between the brothers started to sour.<sup>11</sup> Evidence was also submitted about the brothers’ arguments, the crude and vulgar language that was used, and the fact that the appellant had raised his voice during the arguments and threatened to assault and financially ruin the respondent.<sup>12</sup>

<sup>1</sup>Genesis 4 (King James).

<sup>2</sup>Act II and III of King Lear.

<sup>3</sup>Act I Scene I of Richard III.

<sup>4</sup>Shelly Eriksen & Vickie Jensen, A Push or a Punch: Distinguishing the Severity of Sibling Violence 24 *J. of Interpersonal Violence* 183, 183 (2009).

<sup>5</sup>Murray A Strauss, Richard J Gelles & Suzanne K Steinmetz (1976) *Behind Closed Doors: Violence in the American Family* New York: Anchor Books, page 84; Quoted in *Id.* at 183; See also, Lisa Stock, Sibling Abuse: It is Much More Serious than Child’s Play, 14 *Children’s Leg. Rights J.* 19, 19 (1993); Mildred Daley Pagelow The Incidence and Prevalence of Criminal Abuse of other Family Members, 11 *Crime and Just.* 264, 264 (1989).

<sup>6</sup>*Supra* n. 2 at 185.

<sup>7</sup>*Daffy v. Daffy* (659/2011[0]) [2012] ZASCA 149; [2012] 4 All SA 607 (SCA); 2013 (1) SACR 42 (SCA).

<sup>8</sup>*Id.* at ¶2.

<sup>9</sup>*Id.* at ¶3.

<sup>10</sup>*Id.*

<sup>11</sup>*Supra* n. 5 at ¶4.

<sup>12</sup>*Id.*

While a legal proceeding to resolve the qualms about ownership of Core Mobility (Pty) Ltd was ongoing, the respondent applied for a protection order under the Domestic Violence Act 116 of 1998. He submitted the following facts that: the papers for this legal proceeding concerning the ownership of Core Mobility (Pty) Ltd were served on him at his place of work, his brother had threatened him, that it constituted domestic violence and that it therefore justified a protection order being granted in his favour.<sup>13</sup> The appellant, in turn, contended that the dispute between them was of a commercial nature and not a matter of domestic violence that fell under the ambit of the Act.<sup>14</sup>

The position of South African courts on what exactly constitutes a domestic relationship for the purposes of the Domestic Violence Act, and whether the respondent was entitled to the protection order is clear from the history of this particular case. On 4 December 2009 the respondent successfully applied in a Magistrate's Court for an interim protection order against the appellant in terms of the Domestic Violence Act 116 of 1998.<sup>15</sup> The appellant successfully opposed the confirmation of the interim order and the respondent proceeded to appeal to the South Gauteng High Court which upheld the appeal on 27 May 2011.<sup>16</sup> However, on 28 September 2011 the Supreme Court of Appeal found in favour of the respondent, finding that while "... emotions can often become inflamed in the course of litigation between relatives ..." the parties' relationship and their heated dispute did not fall under the broad definitions of domestic violence and domestic relationships as set out in section 1 of the Domestic Violence Act 116 of 1998.<sup>17</sup>

### III. THE SUPREME COURT OF APPEAL'S CONSTRICTED INTERPRETATION OF SOUTH AFRICA'S DOMESTIC VIOLENCE ACT 116 OF 1998

The South African Domestic Violence Act 116 of 1998 was signed into law in December of 1998. And, in terms of international standards, is a relatively progressive statute aimed at providing the maximum protection from domestic abuse that the law can provide.<sup>18</sup> The Act's comprehensive scope and objectives are stated in its preamble. It is specifically acknowledged, for example, that domestic violence can take many forms and that acts of domestic violence may be committed in a wide range of domestic relationships.<sup>19</sup> It is also recognised that the remedies currently available to the victims of domestic violence have proved to be ineffective. The Act is furthermore based on the Constitutional rights to equality,<sup>20</sup> and freedom and security of the person.<sup>21</sup> The right to freedom and security of the person includes the right to be free from all forms of violence from either public or private sources and not to be treated in an inhuman or degrading manner.<sup>22</sup>

Yet, in the case of *Daffy v. Daffy*, no reference was made to these objectives and foundational principles underpinning the Domestic Violence Act of South Africa. The court did not take the allegations of domestic violence in this matter seriously, the court ignored the full extent and context of the allegations, and did not give adequate consideration to the possibility that a dysfunctional relationship between siblings can amount to a case of domestic violence. A critical analysis of the court's findings on the two key elements in the Daffy case – whether there was a domestic relationship between the brothers and whether the appellant's actions amounted to domestic violence – follows.

#### What constitutes a domestic relationship?

The definitions relating to *domestic relationship* and the possible parties to such a relationship are of particular importance. In section 1(iii) a complainant is defined as "... any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence". A respondent is defined in section 1(xx) and "... include persons who are or were in a domestic relationship with a complainant and who have committed or allegedly committed an act of domestic violence against such a complainant".<sup>23</sup>

<sup>13</sup>*Supra* n. 5 at ¶ 3.

<sup>14</sup>at ¶ 5.

<sup>15</sup>*Id.* at ¶ 1.

<sup>16</sup>*Id.*

<sup>17</sup>*Supra* n. 5 at ¶ 2.

<sup>18</sup>The preamble of the Domestic Violence Act 116 (1998).

<sup>19</sup>*Id.*

<sup>20</sup>S. Afr. Const. § 9.

<sup>21</sup>*Id.* at § 12.

<sup>22</sup>*Id.* at § 12(1)(c) and (e).

<sup>23</sup>Section 1(iii) Domestic Violence Act 116 of 1998.

A detailed and comprehensive definition of *domestic relationship*, is provided in section 1(vii):<sup>24</sup>

domestic relationship means a relationship between a complainant and a respondent in any of the following ways:

- (a) they are or were married to each other, including marriage according to any law, custom or religion;
- (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- (d) they are family members related by consanguinity, affinity or adoption;
- (e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
- (f) they share or recently shared the same residence.

The appellant in the *Daffy* case relied on section 1(vii)(d) of the Act; however, the Supreme Court of Appeal questioned whether the legislature had envisaged that distant cousins who have nothing in common except for an ancient mutual ancestor can be regarded as having a domestic relationship.<sup>25</sup> With reference to the Constitutional Court case of *S v. Baloyi (Minister of Justice & another intervening)*, 2000(2) SA 425 (CC) it was determined that *domestic violence* is commonly understood as being "... violence within the confines of a family unit, often hidden from view by reason of the helplessness of the victim and the position of power of the abuser".<sup>26</sup> The court also held that *domestic* generally refers to "... the home, house or household or one's home or family affairs".<sup>27</sup> And the word *family*, it was said, refers to "... the body of persons who live in one house or under one head including children, parents, servants etc".<sup>28</sup> The legislature, it was held, although favouring a broad inclusion, could not have intended that a mere blood relationship, even if close, would in itself be sufficient to activate the application of the Act.<sup>29</sup>

The South African Law Reform Commission<sup>30</sup> also considered the scope of the definition of domestic relationship prior to the promulgation of the Act. In their deliberations, the question was raised whether the inclusion of family members that fall beyond the immediate nuclear family, which is primarily concerned with the prevention of violence between parties living together, would negate the spirit of the Act.<sup>31</sup> Fedler (a member of the Law Reform Commission) suggested that it is not the particular relationship between the parties, but rather the dangerous household environment that must be regarded as the unit of protection.<sup>32</sup> The Law Commission consequently recommended that the term *family* be defined to include siblings and even brothers- and sisters-in-law who share a common residence or a similar close relationship.<sup>33</sup>

Seen from this perspective, the Supreme Court of Appeal's finding in the *Daffy* case, that some association more than mere consanguinity is required for a domestic relationship in terms of the Act, certainly seems to be correct.

However, many valid arguments also exist for adopting a broader view of what a domestic relationship involves. First, it is generally accepted – and also evident from the wording of the Domestic Violence Act as described above<sup>34</sup> – that the notion of family goes beyond immediate parties to a marriage, and the act of cohabitation should therefore not be posed as a

<sup>24</sup>Section 1(vii) Domestic Violence Act 116 of 1998.

<sup>25</sup>*Daffy*, *supra* n. 5 at ¶ 7.

<sup>26</sup>*S v. Baloyi (Minister of Justice & another intervening)*, [2000] (2) SA 425 (CC) at ¶¶ 11–12; See ¶ 8 of *Daffy v. Daffy* (659/2011) [2012] ZACSA 149.

<sup>27</sup>*Id.*

<sup>28</sup>*Id.*

<sup>29</sup>*Daffy*, *supra* n. 5 at ¶¶ 7 and 8.

<sup>30</sup>Discussion Paper 70, Project 100 ISBN 0-621-17650-8 (1997).

<sup>31</sup>*Id.* at 25.

<sup>32</sup>Joanne Fedler, 'Lawering Domestic Violence through the Prevention of Family Violence Act 1993' An Evaluation after a Year in Operation', 112 *S. Afr. L. J.* 231, 239–240 (1995).

<sup>33</sup>*Supra*. n. 26 at 26.

<sup>34</sup>Domestic Violence Act 116 (1998).

prerequisite.<sup>35</sup> It is also submitted that a broader understanding of domestic violence will not negate the primary purpose of the Act as the applicant must prove *locus standi* as well as a material interest in the application.<sup>36</sup> And the respondent would be afforded the opportunity to oppose the preliminary interdict. This, together with the discretion of the presiding officer, will alleviate an abuse of the process and quash arguments against making the inexpensive and speedy remedies provided by the Domestic Violence Act available to a broader category of persons.<sup>37</sup> (These remedies include that a peace officer may arrest, without a warrant, a person suspected of having committed an act of domestic violence,<sup>38</sup> and that a court may issue an interim protection order without the respondent having received notice of the proceedings.)<sup>39</sup>

Although the United Nations framework for model legislation on domestic violence urges States to adopt the broadest possible definitions of acts of domestic violence and relationships within which domestic violence occurs, it also submits that domestic violence must be distinguished from intra-family violence and should be legislated accordingly.<sup>40</sup> This recommendation is made, however, without any rationale or guidance on the basis for such a distinction. Similarly, in the Daffy case, the Supreme Court of Appeal also expressed the need for a more precise distinction between domestic abuse and intra-family violence, but indicated that it is "... unnecessary to attempt to determine precisely what would be required for a [domestic, as opposed to an intra-family] relationship/violence".<sup>41</sup> The Court ultimately concluded that the fact that the respondent and the appellant were brothers was not enough to activate the mechanisms of the Domestic Violence Act.<sup>42</sup>

Despite this determination, the reality is that *family* and the *domestic unit* are organic, elastic concepts – especially in a pluralistic society like South Africa.<sup>43</sup> In *MEC for Education, KwaZulu-Natal and others v. Pillay*,<sup>44</sup> for example, the Court stated that the word 'family' was incapable of a precise legal connotation or definition.<sup>45</sup> Family and what constitutes a domestic unit is rather depended on cultural and sometimes also religious practices.<sup>46</sup> This is reflected in the South African Constitution where it is stated that everyone has a right to family life in accordance with the family's culture, which includes the right to participate in the cultural life of their choice and not to be denied the right to belong to a cultural, religious or linguistic community of choice.<sup>47</sup> This broad definition of 'family' and the 'domestic unit' was also evident from the Constitutional Court's recent decision in an unrelated case, *Hatting & others v. Juta*,<sup>48</sup> where it was held that there is no statutory justification to limit the term 'family' to that of a nuclear family. Justice – in a substantive sense – is therefore not served by a restrictive, legalistic approach in defining the concept of family narrowly.

### What comprises an act of domestic violence?

Similar to the detailed and comprehensive definition of *domestic relationship* in the South African Domestic Violence Act, provision is also made for a comprehensive and detailed exposition of various different forms of violence. The following forms of violence are explicitly provided for in the Domestic Violence Act 116 of 1998:

- (1) (viii) 'domestic violence' means –
  - (a) physical abuse;
  - (b) sexual abuse;

<sup>35</sup>*Supra*. n. 26 at ¶ 3.2.4, 26; *Huang v. Secretary of State for the Home Department*, [2007] UKHL 11; [2007] 2 AC 167 (HL); *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa* 1996 [1996] ZACC 26; (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC).

<sup>36</sup>*See* §§ 4–6 of the Domestic Violence Act 116 (1998).

<sup>37</sup>*Supra*. n. 26 at 27, ¶ 3.2.6.

<sup>38</sup>*Supra*. n. 30, § 3.

<sup>39</sup>*Supra*. n. 30, § 5.

<sup>40</sup>UN Framework: United Nations Economic and Social Council (Commission on Human Rights) Report of the Special Rapporteur on Violence Against Women, its causes and consequences – A framework for model legislation on domestic violence UN, ¶ 6 (1996).

<sup>41</sup>*Supra* n. 5 at ¶ 8.

<sup>42</sup>*Supra* n. 5 at ¶ 9.

<sup>43</sup>*Supra* n. 31.

<sup>44</sup>*MEC for Education, KwaZulu-Natal and others v. Pillay*, [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC).

<sup>45</sup>*See also Hattingh and others v. Juta*, [2012] (5) SA 237 (SCA).

<sup>46</sup>*See* S. Afr. Const. §§ 30 and 31.

<sup>47</sup>*See* S. Afr. Const. §§ 30 and 31.

<sup>48</sup>*Hatting & others v. Juta*, (CCT 50/12) (2013).

- (c) emotional, verbal and psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) damage to property;
- (i) entry into the complainant's residence without consent, where the parties do not share the same residence; or
- (j) any other controlling or abusive behavior towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

Each of these forms of violence are further described and defined in subsections of section 1 of the Act. The descriptions and definitions are detailed and comprehensive, creating the perception of a broad and inclusive approach when it comes to the various forms of violence covered in the Domestic Violence Act.<sup>49</sup>

Despite the broad and encompassing notion of domestic violence in the Act, the Supreme Court of Appeal in *Daffy* dismissed the allegations of domestic violence just as it did with respect to the question whether a domestic relationship existed between the brothers. Informed by their constricted interpretation of what should be included in a domestic relationship, the Supreme Court of Appeal applied a limited interpretation to what behaviours and actions constitute domestic violence. Whether one agrees with their decision on either of these grounds is actually not the point because the real problem is the manner in which the court dealt with both submissions. With regard to the question whether the appellant had indeed suffered from domestic violence or abuse, the Court incorrectly applied the requirement relevant to section 1(viii)(j), to all the forms of domestic violence listed in that section. Thereby effectively elevating the section 1(viii)(j) requirement to the status of an additional requirement to all the various forms of domestic violence listed in the Act.<sup>50</sup> The Court held, for example, that for conduct to be regarded as domestic violence in terms of this Act, the conduct must ultimately cause harm or imminent harm to the safety, health or wellbeing of the complainant. Yet, this requirement applies only to section 1(viii)(j), which provides for any other controlling or abusive behaviour toward a complainant. It is submitted that the Supreme Court's interpretation of the bounds of domestic violence in this case, was exclusively based on criminal law concepts of the essential *actus reus* for domestic violence crimes and completely ignored the myriad of behaviours used by abusers to torment their victims.<sup>51</sup>

By construing violence only in terms of the harm or imminent harm that it can cause, the court completely ignored the fact that some forms of behaviour may not necessarily cause harm or imminent harm to safety, health or wellbeing, but may actually be a recognised form of domestic violence in terms of the provisions of the Act. Emotional abuse, for example, may not cause any physical harm but does have an impact on a complainant's psychological well-being which can be difficult to prove in a court of law.<sup>52</sup> Similarly, stalking, harassment and intimidation can involve mere threats and do not necessarily pose any imminent harm to the complainant's safety, yet these forms of behaviour were included in the Act as forms of domestic violence.<sup>53</sup> It is apparent that the legislature adopted a broader definition and understanding of what domestic violence may entail, thus allowing for a wide range of behaviours and resultant effects.

For this reason, it is paramount that a degree of flexibility is allowed when evaluating the various forms of domestic violence included in the Act. It is also important that behaviour is not considered in isolation but instead, the court should consider the full context of a complex abusive relationship in order to understand the full effect of the alleged violent or abusive behavior. Domestic violence is, after

<sup>49</sup>Section 1(ix) – (xiii) and (xxi) – (xxiii).

<sup>50</sup>*Supra* n. 5 at ¶ 11.

<sup>51</sup>Steve Mulligan, Redefining Domestic Violence: Using the Power and Control Paradigm for Domestic Violence Legislation, 29 *Children's Leg. Rights J.* 33, 33 (2009).

<sup>52</sup>*Supra* n. 26 at [3.10.5]; See also Merlyn Barkhuizen, A Conceptual Framework of the South African Male Victim of Domestic Violence within a Heterosexual Cohabiting Relationship, 25 *Acta Criminologica* 16 (2012) and Merlyn Barkhuizen, Professional Somen as Victims of Emotional Abuse Within Marriage or Cohabiting Relationships, 18 *Acta Criminologica* 10 (2005).

<sup>53</sup>This is in line with legislation in many other countries, for comprehensive list see *Supra* n. 26 at ¶¶ 3.10.12 – 3.10.41.

all, characterised by the motive of the abuser to gain power and control.<sup>54</sup> The legislative history that the Law Commission submitted during its deliberations prior to the promulgation of the Act, reveals that a number of acts that form part of a pattern of behaviour may amount to abuse, even though some or all of those acts, when viewed in isolation, appear to be minor or trivial.<sup>55</sup> This is especially important because “... domestic violence is made distinctive by a pattern of power and control in which every act can only be understood in the larger context of the abuser’s dominance”.<sup>56</sup>

In *Daffy*, the Supreme Court of Appeal criticised the respective legal representatives for trying to provide for the court’s consideration, such a complete context of the brothers’ relationship. The judges, in direct contradiction to the objectives as set out in the preamble of the Domestic Violence Act, disregarded references made to previous incidents of alleged violence as irrelevant and trivial.<sup>57</sup> The court concluded that, while the appellant’s conduct may qualify as annoying and irritating, it did not, in their view, harm or threaten to harm the respondent’s health, safety or wellbeing and could therefore not be regarded as a form of domestic violence. The appeal was consequently dismissed with costs. By ignoring the appellant’s complete narrative, the Supreme Court of Appeal effectively ‘gutted’ his submission which relegated his side of the case to one that was incoherent and unpersuasive since it was not being viewed outside of the context necessary to understand the particular relationship and the alleged incident of violence.<sup>58</sup>

#### IV. CONCLUSION

While the case of *Daffy* may at first seem like an isolated matter, with only limited interest to the South African Domestic Violence Act, the concerns raised by the Supreme Court of Appeal’s dismissal of the pertinent issues in this case certainly also resonate in domestic violence legislation and litigation in other jurisdictions. And, while this case may be at the outer limits of what could and should be covered by domestic violence legislation, it certainly raises questions about the distinction between domestic violence and intra-family violence, about the content and different forms of behaviour that constitutes domestic violence, and whether the protection afforded by domestic violence legislation should be extended to other forms of relationships not traditionally covered by such statutes.

It was evident from the critical analysis of this particular case that the main difficulty in defining who is included in a domestic relationship for the purpose of domestic violence, is to do it in such a way as to include all individuals viewed as being in need of the protective provisions of domestic violence legislation, while at the same time ensuring that the scope of the Act does not become too broad.<sup>59</sup> The notion of intra-family violence should therefore be developed in more detail and adequate protection in terms of the law should also be provided for such forms of violence. The case of *Duffy* exposed this lack of legislative support for domestic relationships that fall outside the classic family unit.

With regard to what constitutes domestic violence, it must be emphasised that no *numerous clausus* of forms of domestic violence exists. And, it is also not the aim of this article to argue for the blanket inclusion of sibling conflict cases in the realm of domestic violence. Whether a particular act or pattern of behaviour constitutes domestic violence will depend on the overall facts and merits of the particular case, including a history of all the alleged incidents. What is clear from the *Daffy* decision, however, is that we cannot be clouded by our own preconceptions of what domestic violence entails and who the parties are that are usually involved when considering such alleged violent behaviour.

<sup>54</sup>*Supra* n. 46 at 35.

<sup>55</sup>*Supra* n. 26 at ¶ 3.10.39, 20.

<sup>56</sup>*Supra* n. 46 at 35.

<sup>57</sup>*Supra* n. 5 at ¶ 2.

<sup>58</sup>*Supra* n. 46 at 3.

<sup>59</sup>*Supra* n. 26 at 37.